

Remarks

No claims have been amended.

1. Rejection under 35 U.S.C. 103(a)

Claims 1, 2, 4, 6 and 8-16 are rejected as allegedly obvious over U.S. Patent 5,770,559 (“the ‘559 patent”) in view of WO 2003072139 (“the ‘139 application”) and further in view of U.S. Published Application No. 20040109890 (“the ‘890 publication”) for the reasons asserted on pages 3-7 of the Office Action. According to the Examiner, the ‘559 patent describes the Agent recited in claim 1 and teaches that compounds such as the Agent may be formulated into pharmaceutical compositions suitable for oral administration. The Examiner also asserts that the ‘139 application teaches that the Agent is soluble at pH 1, is practically insoluble above pH 7, and that formulations of the Agent with particular excipients (such as water-soluble cellulose ethers) reduce precipitation of the Agent when the pH increases from stomach pH to the pH found in the upper GI tract. Regarding the ‘890 application, the Examiner asserts that rapidly disintegrating oral tablets are disclosed, where the tablets contain a medicinal substance, a water-soluble acid substance, a water-soluble binding agent and a water-soluble saccharide.

Applicants submit that the ‘559 patent is not pertinent to the present invention. It is presumed that the Examiner in fact intended to cite U.S. Patent 5,770,599 (“the ‘599 patent”), which does relate to the Agent. For the record, Applicants respectfully request that the Examiner formally acknowledges this correction.

Additionally, Applicants submit that the ‘139 application is not available as prior art to the subject application under 35 U.S.C. 103(c). In particular, Applicants point out that the priority document (GB 0317663.3) claimed by the subject application has a filing date of July 29, 2003, which predates the publication date of September 4, 2003 of the ‘139 application. Because the international filing date of the ‘139 application (*i.e.*, February 24, 2003) predates the July 29, 2003 filing date of the priority document, the ‘139 application only qualifies as prior art to the subject application under 102(e). Further, Applicants confirm that at the time of the invention of the subject application, the subject application and the ‘139 application were either owned by the same entity or subject to an obligation of assignment to the same entity (*i.e.*,

AstraZeneca AB). Accordingly, the '139 application may not properly be used in constructing the obviousness rejection of record. Applicants submit that the remaining references cited as part of the rejection (*i.e.*, the '599 patent and the '890 publication), either alone or in combination, do not teach or suggest the claimed invention. Applicants therefore request that this rejection be withdrawn.

2. Double Patenting Rejection


Claims 1, 2, 4, 6 and 8-16 are provisionally rejected as allegedly unpatentable over claims 1-18 of copending Application No. 10/505,231.

Applicants note that this rejection remains provisional in that no claims have been allowed in Application No. 10/505,231. Therefore, no further response is required at this time.

Except for issues payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

Dated: **June 5, 2008**
Morgan, Lewis & Bockius LLP
Customer No. **09629**
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: 202-739-3000
Fax: 202-739-3001

Respectfully submitted,
Morgan, Lewis & Bockius LLP



Gregory T. Lowen
Registration No. 46,882
Direct: 202-739-5915